IN THE HIGH COURT OF UTTARNCHAL AT NAINITAL.

Writ Petition no. 418 (SS) 2005.

Smt. Basanti Devi W/o Lal Singh,
Resident of village and Post office- Muwani,
Tehsil Didihat, District Pithoragarh. .....Petitioner.

Versus

1. Union of India through Secretary,
   Ministry of Defence,
2. Record Officer, Kumaon Regiment,
   Abhilekh Karyalaya Records Ranikhet,
3. Smt. Deepa Jimwal now Deepa Thapa,
   W/o Daulat Bhadur Thapa,
   R/o village Bamne Panee Munokoat,
   P.O. Sirkutch, Distt. Pithoragarh. .....Respondents.

Sri Kishore Kumar, learned counsel for the petitioner,
Smt. Anjali Bhargava, learned Standing Counsel for Union of India for respondent nos. 1 and 2.
Sri Anil Bisht, learned counsel for respondent no.3.

Hon'ble M.M. Ghildiyal, J.

Heard Sri Kishore Kumar, learned counsel for the petitioner, Smt. Anjali Bhargava, learned Standing Counsel for Union of India/respondent nos. 1 & 2 and Sri Anil Bisht, learned counsel for respondent no. 3

By means of this writ petition, the petitioner have prayed for the following reliefs:-

i. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to made the entire pension in the name of the petitioner,

ii. Issue a writ, order or direction in the nature of mandamus commanding the respondent no. 2 to

recover the death benefits of the petitioner's son from respondent no. 3,

iii. Any other writ, order, direction or relief, which this Hon'ble Court may deem fit in the circumstances of the case may also be passed,

iv. Award the cost of the petition.

The respondents have filed counter affidavit. In the counter affidavit filed by the Union of India, the respondents have taken the following stands in rebuttal of the averments made by the petitioner in her petition:-

"That the contents of the para no. 3 to 6 of the writ petition are admitted being matter of record. However, it is submitted that since the complete amount of Army Group Insurance amounting to Rs. 1,65,000/- and maturity benefits amounting to Rs. 2086/- have already been released by Army Group Insurance Directorate in favour of the respondent no. 3 as per ruled vide Army Group Insurance Directorate letter dated 02.03.1998 as such it is now not possible to pay 50% of the Army Group Insurance and Maturity Benefits to the petitioner."

"That in reply to the contents of the para no. 7 & 8 of the writ petition it is submitted that the petitioner and the respondent no. 3 Smt. Deepa Jimwal filed affidavit for claiming insurance benefits from Army Group Insurance Directorate, New Delhi in which both have mutually agreed to share the benefits of the deceased. It is pertinent to mentioned here that the affidavit are specifically made for the claim of insurance benefits and not for any other claim."

"That in reply to the contents of the para no.10 of the writ petition it is submitted that the respondent no. 3 being legally wedded wife of the deceased solider as per service records is entitled to receive the pensionery benefits accrued due to the death of her husband under the provision of Government of India, Ministry of Defence letter no. 1(2)/97/D (Pen-C) dated 31.01.2001 even after remarried with a person

other than real brother of her late husband. Therefore, the contention of the petitioner for grant of entire pension of the deceased soldier is misconceived. There being no provision for grant of full family pension to the mother (petitioner) as such liberalized special family pension was divided in the ratio of 50% : 50% between the petitioner and the respondents no. 3."

On 8th November 2001 the Senior Record Officer, Kumaon Regiment has also wrote a letter to the advocate of the petitioner in reply to the notice given by the petitioner informing therein that since the complete sum of AGI death benefits has already been released by AGI Directorate in favour of the widow Smt. Deepa Jimwal, it is now not possible for the Directorate to pay 50% of the AGI benefits to the petitioner.

In the circumstances above, the petitioner may seek appropriate remedy for getting her share in the amount already released by the Directorate, according to the declaration made by Smt. Deepa Jimwal/ respondent no. 3 in her affidavit filed before the respondents.

In view of the above discussions, the writ petition is misconceived, as such, is dismissed accordingly. The petitioner may seek appropriate remedy available to her.

(M.M. Ghildiyal, J.)

December 6, 2006:
NCM: